FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/38UC/HBA/2021/0003**
HMCTS code (audio, video, paper)	**:**	**V: CVPREMOTE**
Applicant	**:**	**Oxford City Council**
Respondent	**:**	**Benjamin Philip Jacob-Smith**
Type of application	**:**	**Application for a banning order -** Section 15(1) of the Housing and Planning Act 2016
Tribunal members	**:**	**Judge David Wyatt** **Mrs M Hardman FRICS IRRV (Hons)**
Date of decision	**:**	**18 February 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to are described in paragraphs 4 and 5 below. We have noted the contents.

Decision

The tribunal does not make a banning order.

Reasons

The application and parties

1. The Applicant applied under section 15(1) of the Housing and Planning Act 2016 (the "**2016 Act**") for a banning order against the Respondent for three years.

2. By section 14 of the 2016 Act, a banning order is an order made by the tribunal, banning a person (for a period specified in the order, of at least 12 months) from: (a) "*letting*" "*housing*" in England; (b) engaging in "*English letting agency work*"; and/or (c) engaging in "*English property management work*". By section 15(1), a local housing authority in England may apply for a banning order against a person who has been convicted of a "*banning order offence*". By section 18, a banning order may include provision banning the person against whom it is made from being "*involved*" in any body corporate that carries out an activity that the person is banned by the order from carrying out. The expressions shown in italics in this paragraph are defined in sections 18 and 54 to 56.

3. The Applicant is a local housing authority. In effect, they sought an order banning the Respondent from all activities for which a banning order could be made and from being involved in any body corporate that carries out any such activity. The Respondent is 35 years old and appears to be involved with the companies mentioned below.

Procedural history

4. On 25 October 2021, a procedural judge gave case management directions. These explained the basic issues which would need to be addressed, as set out below. They required the Applicant to produce a bundle of the documents they relied upon and the Respondent to produce their bundle of documents in answer, with permission for a reply from the Applicant. The Applicant produced their hard copy bundle of 469 pages.

5. The Respondent did not produce bundles as directed, or otherwise respond to the proceedings. All correspondence from the tribunal office was sent to the Respondent by post and e-mail to the addresses provided by the Applicant, and not returned. The Applicant's credit reference search from 2020 confirmed the relevant postal address (in Rochford, Essex) for the Respondent. On 28 April 2021, the Respondent attended a hearing in the Oxfordshire Magistrates Court (described below), where the same address was registered for him. On 30 April 2021, the Applicant wrote to the Respondent at that address, giving initial warning that it was considering seeking a banning order and requiring information about his ownership and management of properties. The Respondent signed, dated (18 May 2021) and returned the reply form enclosed with that letter. On 23 December 2021, the procedural judge barred the Respondent from taking further part in the proceedings for failure to comply with the case management directions.

On 31 January 2022, the Applicant sent copy evidence that the Respondent's copy of the bundle had been sent to the relevant address by post on 11 November 2021 and signed for on Saturday 13 November 2021.

6. There was no inspection and none was requested. We are satisfied that an inspection is not necessary to decide this matter. At the hearing on 1 February 2022, the Applicant was represented by Clive Salisbury, Katherine Coney and Lauren Doggett, who are all environmental health officers of the Applicant. The Respondent did not attend. We were satisfied the Respondent had been notified (or reasonable steps had been taken to notify him) of the hearing and considered it was in the interests of justice to proceed with the hearing.

Issues

7. As explained in the case management directions, the basic issues for the tribunal to consider include:

   a. whether the Applicant had given notice of intended proceedings in compliance with section 15 of the 2016 Act, and whether it had otherwise complied with the requirements of that section;

   b. whether the Respondent has been convicted of a banning order offence and: (a) at the time the offence was committed, the Respondent was a "*residential landlord*" or a "*property agent*"; or (b) the application was being made against an officer of a body corporate; and

   c. whether to make a banning order (and, if so, what order to make) having regard to: (i) the seriousness of the offence of which the Respondent has been convicted; (ii) any previous convictions the Respondent has for a banning order offence; (iii) whether the Respondent is or has at any time been included in the database of rogue landlords and property agents; and (iv) the likely effect of the banning order on the Respondent and anyone else who may be affected by the order.

Compliance with section 15 of the 2016 Act

8. Before applying for a banning order against a person who has been convicted of a banning order offence, the local housing authority must follow the procedure in section 15.

9. By 28 May 2021 (having sent copies by e-mail on 26 May 2021 and then by post), within the six-month time limit under section 15(6), the Applicant sent notice to the Respondent that, because of the convictions described below, it intended to apply for a banning order for all relevant activities for three years. It allowed 28 days for representations, as required by section 15(3). The Applicant did not receive any such representations. The tribunal received the application for a banning order on 29 September 2021, after the notice period had

expired. In the absence of any dispute about this, we are satisfied that the notice of intended proceedings complied with section 15 of the 2016 Act and the Applicant has otherwise complied with the procedural requirements of that section.

Banning order offences and status of the Respondents

10. By section 16(1) of the 2016 Act the tribunal may, on an application complying with section 15, make a banning order against a person who: (a) has been convicted of a banning order offence; and (b) was a "*residential landlord*" or "*property agent*" at the time the offence was committed. By section 16(3), where an application for a banning order is made against an officer of a body corporate, the tribunal may make a banning order against that officer even if the condition in section 16(1)(b) is not met.

11. We are satisfied that on 28 April 2021 the Respondent was convicted in the Oxfordshire Magistrates Court of, on 7 February 2020, committing the offences summarised below under sections 72(1) and 234(3) of the Housing Act 2004 (the "**2004 Act**"), and fined for those offences. By regulation 3 of (and the schedule to) the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018, these are banning order offences unless the sentence imposed on the offender is an absolute or conditional discharge. In the circumstances, we are satisfied that the Respondent has been convicted of banning order offences.

12. It was not contended that the Respondent was a residential landlord at the time the banning order offences were committed. By section 56 of the 2016 Act, a "*property agent*" means a:

    a. "*letting agent*" (as defined in section 54; in summary, subject to exceptions, a person who does anything in the course of a business in response to instructions from a prospective landlord or a prospective tenant); or

    b. "*property manager*" (as defined in section 55; in summary, subject to exceptions, a person who does anything in the course of a business in response to instructions from a client where they wish the person to arrange services, repairs, maintenance, improvements or insurance in respect of, or to deal with any other aspect of the management of, premises on the client's behalf).

13. When the Applicant prepared their bundle, the Respondent was a director of three "active" companies, including Oxford Room Lets Ltd, company number 10553280 ("**ORL**"). ORL was incorporated on 9 January 2017. The Respondent was appointed on the same day as, and remains, its sole director. Companies house records describe the nature of its business as: "*Management of real estate on a fee or contract basis*". It was named Freemoov (Lettings) Ltd until 6 January 2020. It was subject to a current proposal to strike it off the register of companies, apparently because accounts are overdue. The two other

"active" companies, Move & Save (Sales) Ltd and Freemoov (Sales) Ltd (previously Freemoov (Management) Ltd), are described as real estate agencies and again their accounts are overdue. The Applicant also referred to several dissolved companies, some with similar names, of which the Respondent had been a director.

14. On 29 April 2019, ORL (under its then name, written in the document as "*Freemoov Lettings Ltd*") entered into a "*guaranteed rent agreement*" for 26 Helen Road, Oxford OX2 0DE ("**Helen Road**") with the freehold owner. The document is branded "*FreeMoov*". During the term of 12 months ending on 15 May 2020, ORL was to pay a monthly fee/rent of £1,250. The owner appointed ORL to collect all rental income and keep the property in good repair and condition (subject to limits and exceptions; essentially, any significant works would be for the owner or at the owner's expense). ORL was entitled to let and to collect and keep all rental income from occupiers.

15. On 15 July 2019, ORL (again, under its then name) entered into a "*Freemoov*"-branded "*guaranteed rent agreement*" for 35 Donnington Bridge Road, Oxford OX4 4AZ ("**Donnington**") with the freehold owner. During the term of 24 months ending on 14 July 2021, ORL was to pay a monthly fee/rent of £3,100. The other terms of the agreement are substantially the same as that for Helen Road (subject to a side/letter agreement, described below). From 15 July 2019, the Respondent was recorded with the Applicant as the lead person liable for council tax in respect of Donnington.

16. It appears the Respondent "*of Freemov*" was named by the owner of 33 Pegasus Road and 22 Courtland Road in Oxford as the proposed manager when applying for licenses for those properties as houses in multiple occupation ("**HMO**"). Notices of the Applicant's decision to grant those licences were given in September and November 2019, respectively.

17. It is not clear whether the Respondent was operating as a letting agent and/or property manager (as defined) in his own right. He may have been, but we do not have enough evidence to assess this. However, we are satisfied that on 7 February 2020, when the banning order offences were committed, ORL was a letting agent and/or property manager (as defined) and the Respondent was an officer of ORL. Accordingly, by virtue of section 16(3), noted above, the tribunal may make a banning order against the Respondent.

Whether to make a banning order (and, if so, what order to make)

18. By section 16(4), in deciding whether to make a banning order against a person, and in deciding what order to make, we must consider: (a) the seriousness of the offence of which the person has been convicted; (b) any previous convictions the person has for a banning order offence; (c) whether the person is or has at any time been included in the database of rogue landlords and property agents; and (d) the likely effect of the

banning order on the person and anyone else who may be affected by the order. We examine each of these in turn below, keeping the following points in mind.

19. The effect of a banning order is severe, preventing a person from lawfully letting housing or engaging in letting agency or property management work in England, and (if the order sought by the Applicant is made) being involved in any body corporate that carries out any such work. All those expressions are defined widely under the 2016 Act. Breach of a banning order is a criminal offence for which an offender is liable to imprisonment, or fines, or both, or may result in a financial penalty. By section 29 of the 2016 Act, a local housing authority must also enter in the rogue landlord database the name of any person against whom a banning order is made, if they have not already entered them on the database in respect of the relevant banning order offence(s).

20. The government department responsible for housing regulation, now the Department for Levelling Up, Housing and Communities, published guidance in respect of banning orders under its previous name (MHCLG) in April 2018: "*Banning Order Offences under the Housing and Planning Act 2016*" (the "**Guidance**"). It is good practice for a local housing authority to follow the Guidance and we may also take it into account when coming to our decision. It gives guidance on the mandatory considerations and we refer to the relevant parts below. It also states [at 1.7] that banning orders are aimed at: "*Rogue landlords who flout their legal obligations and rent out accommodation which is substandard. We expect banning orders to be used for the most serious offenders*".

21. The Applicant has also produced their own document entitled: "*Banning Orders and Rogue Landlord Database Guidance Note*". Ms Coney confirmed this was only an internal guidance note prepared for relevant officers of the Applicant, not a policy document; it had not been referred to legal advisers or committees. It suggests a "*strong stance … to ensure tenants are protected*". It argues (by reference to decisions of other First-tier Tribunals) that it is the underlying conduct which determines the seriousness of a banning order offence, not necessarily the size of a fine. It continues: "*Where a landlords history demonstrates on-going lack of compliance with legislation, for example issue of previous financial penalties, formal cautions or warnings … this will demonstrate the person has not yet been deterred from committing offences and has not willingly changed their behaviour. A banning order is the only option left…*". We asked about these parts of the Applicant's internal guidance at the hearing, since they do not seem entirely consistent with the Guidance. However, we take into account the contents of the document and what was said (albeit for the first time at the hearing) about the Applicant's general approach to dealing with housing conditions in the area. Mr Salisbury told us the Applicant licenses about 3,500 HMOs, dealing with many

landlords and property agents. It prioritises and is active in enforcement, "*routinely*" imposing financial penalties/fines. Ms Coney explained that the Applicant's housing area is one of the least affordable in the country for people to buy residential property, with about one in two homes privately rented. She said it represents a huge letting market.

Seriousness of the relevant offences

22. As noted above, the first consideration in deciding whether to make a banning order against a person, and what order to make, is the seriousness of the banning order offence of which the person has been convicted. The Guidance suggests a focus on the sentence imposed by the court for those offences, saying [at 3.3]: "*The more severe the sentence imposed by the Court, the more appropriate it will be for a banning order to be made. For example, did the offender receive a maximum or minimum sentence…*".

23. In 2015, the Applicant had made an additional licensing designation. The effect of the designation was to require any HMO in the relevant area with at least three occupiers to be licensed. It was said this replaced an earlier designation to similar effect.

24. The Applicant inspected Donnington on 17 January and 7 February 2020, apparently following a complaint. As noted above, ORL had taken on management of Donnington from July 2019 and granted separate tenancies to individuals to occupy rooms. The tenants shared the communal kitchen. On 17 January 2020, Mr Salisbury met the tenant of the ground floor front bedroom. On 7 February 2020, he met three other tenants, of the ground floor rear bedroom, first floor rear right bedroom and first floor rear left bedroom. When the Applicant made enquiries of the owner, they produced copies of their agreements with ORL (considered below).

25. The Applicant provided a memorandum from the Oxfordshire Magistrates Court that, on 28 April 2021, the Respondent was in relation to Donnington on 7 February 2020:

    a. convicted and fined £10,000 for an offence under section 72(1) of the 2004 Act, of control or management of a HMO which was required to be licensed, but was not; and

    b. convicted and fined a total of £1,500 for four offences under section 234(3) of the 2004 Act. Such offences are failures by a manager (as defined in the 2004 Act) to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006 (the "**Management Regulations**").

26. The offences under section 234(3) are entered on the register as being: (a) failure to display the notice of the manager's details, required under Management Regulation 3 (no separate penalty); (b) failure to comply

with Management Regulation 4(1)(a), in that the front door lock did now allow keyless operation from inside (£500); and failures to comply with Management Regulation 4(4), in that: (c) the fire door between the kitchen and hallway had no closer or fire/smoke seals (£500); and (d) no fire blanket was fitted in the kitchen (£500).

27. The Respondent had attended the hearing in the Magistrates Court, where he changed his pleas in relation to these matters to guilty. By section 72(6) of the 2004 Act, a person who commits an offence under section 72(1) is liable on summary conviction to a fine. By section 234(5), a person who commits an offence under section 234(3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale. That limit (£5,000) was removed in 2015. Since then, and at the time of conviction, the Magistrates Court could have imposed unlimited fines for each offence.

28. In total, the Respondent was fined £11,500, plus a victim surcharge of £74.99 and costs of £1,385, to be paid by instalments of £1,000 per month. We asked whether these fines indicated the Respondent was among the most serious offenders. The Applicant did not contend that the sentences were particularly severe or the offences in relation to Donnington (in isolation) very serious. Mr Salisbury and Ms Coney said (in essence) that the behaviour of the Respondent was "*at the apex of seriousness*" because of: (a) the size of Donnington and abuse of the trust of the owner; and (b) the Respondent's lack of engagement and "*repeat offending*". We consider below the submissions which relate to Donnington. We discuss the other submissions later in this decision.

29. Ms Coney said Donnington was a relatively large HMO and would have been required to be licensed even under normal mandatory licensing if five or more people were in occupation of the six potential bedrooms. The Respondent should already have known, and certainly should have realised from the advice given to him on 21 August 2019 in relation to Helen Road (noted below) that Donnington needed to be licensed and to comply with the Management Regulations. However, the banning order offences were committed on 7 February 2020, as to which the Applicant produced substantial evidence only of four tenants in occupation. Further, Mr Salisbury acknowledged that Donnington was "*not particularly poor inside*". He said the owner had previously carried out conversion work intended to make it suitable for HMO use but planning permission for that had then been refused, so "*to a degree*" Donnington had already been converted for HMO use.

30. We are satisfied that the relevant offences in relation to Donnington were serious. However, as the Guidance observes, all banning order offences are serious. The fine for failure to licence was substantial, but there was no limit on the fine which could have been imposed. The Magistrates Court probably took into account the matters relied upon by the Respondent as making the offence more serious (to the extent these had weight) when deciding the amount of the fine. The other fines were not substantial. The Applicant could not point to any actual

(or any substantial potential) harm caused to the tenants or others by the relevant offences. We are not satisfied that, even if we look behind the sentences to the relevant conduct, these offences alone were sufficiently serious to justify a banning order.

Previous convictions/database of rogue landlords and property agents

31. As noted above, the next mandatory considerations when deciding whether to make a banning order against a person, and if so what order to make, are any previous convictions the person has for a banning order offence and whether the person is or has at any time been included in the database of rogue landlords and property agents. The Guidance says [at 3.3]: "*…A longer ban may be more appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities… For example, in the case of property agents, they are required to be a member of a redress scheme and any evidence of non-compliance could also be taken into account…*".

32. On 7 August 2019, Ms Doggett inspected Helen Road. She discovered three tenants were in occupation, sharing the kitchen and bathroom facilities. The sample tenancy agreements essentially treated "*Freemoov Lettings*" as landlord (described as "Manager"). On 8 August 2019, one of the tenants informed Ms Doggett that a fourth tenant had moved in. On 21 August 2019, Ms Doggett wrote to the Respondent warning that Helen Road was required to be licensed and set out a list of defects which she said were failures to comply with the Management Regulations. She enclosed notices under (amongst others) section 235 of the 2004 Act requiring further information, but these were not answered. She asked to inspect Helen Road again and, after one visit when access was not given, inspected again in September 2019. On 8 October 2019, Ms Doggett wrote to the Respondent inviting him to an interview under caution, setting out details of alleged offences under section 72(1) and 234(3) of the 2004 Act in relation to Helen Road, but received no response.

33. On 30 October 2019, Ms Doggett sent to the Respondent an improvement notice under section 11 of the 2004 Act, requiring by 2 January 2020 installation of mains-powered interlinked smoke alarms in each of the bedrooms as specified, new fire doors with ancillary requirements for the kitchen and bedrooms, a fire blanket in the kitchen and removal or replacement of the locks in the front entrance door and bedroom doors to allow them to be opened from inside without a key. The Applicant also demanded £449.68 for enforcement expenses, but received no response. On 21 January 2020, Ms Coney visited Helen Road with Ms Doggett and noted that the work required by the improvement notice had not been carried out.

34. On 26 February 2020, the Applicant gave notice to the Respondent of its intention to impose financial penalties in respect of Helen Road. On

3 June 2020, it sent final notices to the Respondent imposing financial penalties of:

a. £15,094 for the alleged offence under section 72(1), relying on section 251(1), by which a director of a body corporate also commits an offence committed by that body corporate if it is proved to have been committed with their consent or connivance or to be attributable to any neglect on their part; and

b. £8,341 for alleged offences under section 234(3), again relying on section 251(1).

35. The alleged offences under section 234(3) were said to have been committed on 7 and 29 August and 10 October 2019 and were listed in the reasons given in the final notice (page 288 of the bundle). Ms Coney explained the reason these are different to the issues described in the improvement notice (page 223 of the bundle, summarised above) is that the Applicant intended to prosecute separately for failure to comply with the improvement notice for Helen Road, together with the offences in relation to Donnington and failures to provide information. Following the inspection of Donnington on 7 February 2020, Mr Salisbury wrote to the Respondent summarising what he had found and demanding information under (amongst others) section 235 of the 2004 Act. The Respondent was required to answer by March 2020, but did not, despite reminders. In April 2020, he was sent formal written questions, but did not answer. On 2 October 2020, the Applicant entered the Respondent in the database of rogue landlords and property agents (based on the two financial penalties relating to Helen Road) for a period of three years, expiring on 30 September 2023.

36. Mr Salisbury told us that, at the hearing in the Magistrates Court on 28 April 2021, a "*plea bargain*" was agreed. The Respondent pleaded guilty to the banning order offences described above in relation to Donnington. In exchange, the Applicant offered no evidence in relation to alleged offences of failure to comply with the improvement notice in relation to Helen Road and to provide information which had been demanded. Following the convictions for the banning order offences, the Applicant did not propose to extend the period of the entry in the database of rogue landlords and property agents. Mr Salisbury said the Applicant considered they had a strong case for a banning order, so pursued that alone.

37. The Applicant said the financial penalties imposed in 2020 had not been paid. When we asked what recovery action had been taken, Mr Salisbury said he had checked and found the invoice for the penalties remained unpaid, so the matter had now been referred to the Applicant's legal team to pursue debt collection.

38. The Applicant's submissions focussed on the financial penalties, the failure to comply with the improvement notice and the Respondent's generally "*slippery*" and "*evasive*" approach. Mr Salisbury said at the

hearing that the conduct (particularly the alleged abuse of trust of the owners, which is considered in the next section below), was the worst he had seen in seven years.

39. We give significant weight to the details of the financial penalties, for similar offences in August and October 2019 relating to Helen Road which were then found at Donnington in February 2020, and the failure to pay the penalties.

40. As noted above, the Applicant did not offer evidence in the Magistrates Court in relation to the failure to comply with the improvement notice and failures to provide information. Since we have not been informed of anything in the "*plea bargain*" mentioned by Mr Salisbury to suggest we should not, we assume we can take the relevant conduct into account, based on the evidence provided by the Applicant in these proceedings. The failure to comply with the improvement notice was a serious matter. It is obvious that Helen Road had not been converted properly from an ordinary house to ensure it complied with the Management Regulations for HMOs. Again, no actual harm was said to have been caused by the failure to comply with the improvement notice. However, the lack of interlinked fire alarms in bedrooms, proper fire doors and the other matters described in the improvement notice would have created more potential risk of harm than the circumstances at Donnington.

41. We also give significant weight to the approach taken by the Respondent. He sent what appear to be stalling messages in the later part of 2019 to the owner of Helen Road (which, if anything, suggested he was investigating and proposing that the improvement notice be challenged). The correspondence does not disclose any real intention of complying with his obligations. It appears the Respondent generally avoided answering anything from the Applicant, other than seeking to avoid responsibility in 2019 (in a brief e-mail) and early 2020 (representations not included in the Applicant's bundle but mentioned in the final penalty notices) and, in 2021, answering the questions summarised below about his property ownership and whether he was then still acting as a property agent.

Likely effect of a banning order on the Respondent(s) and anyone else who may be affected by the order.

42. As noted above, in deciding whether to make a banning order against a person, and if so what order to make, the last mandatory consideration is the likely effect of the banning order on the person and anyone else who may be affected by the order. The Guidance [at 3.3] refers to:

    a. the harm caused to the tenant (saying this is a "*very important factor*", and referring to harm or the potential for harm);

    b. punishment of the offender (observing that a banning order is a severe sanction; the length of a ban should be proportionate and reflect both the severity of the offence and whether there is a pattern

of previous offending, set at a level high enough to remove the worst offenders from the sector, ensure it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities);

c. deter the offender from repeating the offence (making any ban long enough to be likely to do so); and

d. deter others from committing similar offences.

43. As noted above, the Applicant could not point to any harm or substantial potential harm in relation to the tenants of Donnington. Ms Coney said at the hearing that the tenants of Helen Road had suffered interruptions to their energy supply (so "*kept*" coming home to find there was no electricity/heating) because the Respondent had to come out to the property to add prepayments to the meter(s). The Applicant could not point us to any examples/times of (or other reference to) this in the witness statements, other than a manuscript note in an exhibited copy of Ms Doggett's notebook of her conversation with a tenant which appears to say: "*No electricity yesterday – called Ben and he topped up meter. Concern will go off in the night…*". The Applicant could not identify any other actual harm caused by the relevant issues at Helen Road. No tenants attended the hearing and the only witness statements from tenants do not mention any such matters. The prepayment meters are mentioned in the relevant financial penalty notice. The property should not have been used as an HMO with prepayment meters, but the improvement notice did not require the meters to be changed. That does not seem consistent with an argument that the meters were causing substantial/urgent problems. We do not have evidence of any significant harm in relation to the energy supply, or anything else, but we take into account the limited evidence provided. We have taken into account the potential harm in relation to the issues set out in the improvement notice and the relevant financial penalty notice.

44. The Applicant said the Respondent had abused the trust of the owners of Donnington and Helen Road. As to Donnington, Mr Salisbury said the owner was the brother of one of "*our*" letting agents and knew the property could not be used as an HMO, so gave it to the Respondent trusting him that it would be let only as a family house, only for the Respondent to let it as an HMO. There was no suggestion that the owner had taken up any references or the like in relation to ORL or the Respondent. Ms Coney submitted that the owner had given clear instructions and handed over Donnington to the Respondent in good faith. The "*guaranteed rent agreement*" for Donnington, dated 15 July 2019, required the owner to: "*adhere to the local council requirements for the subletting of rooms at the Property … and [pay] for necessary changes to the property*". In the agreement, the owner authorised ORL to: "*let out the Property using AST agreements or licences by multiple occupation, to whomever they see fit for the duration of this agreement*". However, with the other evidence they sent to the

Applicant, the owner produced a side letter/agreement dated 9 August 2019 with ORL (then named Freemoov Lettings Ltd) which is expressed to prevail over the "*guaranteed rent agreement*" and (amongst other things) agrees Donnington: "*…shall only be used for commercial short term clients or a family as a whole (where this will not be the occupants main residence).*"

45. Mr Salisbury confirmed the owner was a local landlord with a portfolio of properties. He was: "*more aware than most non-professional landlords*" of the relevant requirements. He had hoped to operate Donnington as an HMO, until planning permission was refused. We asked whether the trust of such an owner had been abused in any substantial way when they had handed over such a property to a small company for what seemed likely to be a full rent for occupation by a family (£3,100pm). Since the company would need to make money in some way, there seemed an obvious risk they might simply breach the terms of the side letter/agreement and let the property as an HMO, or fail to have sufficient controls in place to stop it becoming occupied as an HMO. Mr Salisbury submitted that even ordinary rents in the area are high. The Applicant had already pointed to ambiguities in the contractual documents and contended that it was for ORL to ensure the properties were not let as HMOs when ORL knew they were unlicensed.

46. In relation to Helen Road, Ms Coney acknowledged there had been no clear mention of permitted use, only a claim in the owner's witness statement that: "*Upon signing the contract … I stated to Benjamin, that I would prefer to have a family renting the property as it did not have an HMO. I was assured by Benjamin that he will be taking responsibility regarding management of the property and tenants*". Again, the owner did not attend the hearing. The relevant "*guaranteed rent agreement*" contained the same relevant provisions as those noted above in relation to Donnington, without a side letter/agreement. The rent was lower (£1,250pm) and we have no real information about the experience of the owner. However, they apparently knew that as matters stood the property should not be used as an HMO. Despite that, they said they merely expressed a preference for a family and agreed the terms in the "*guaranteed rent agreement*" which permit: "*licences by multiple occupation, to whomever [ORL] see fit*".

47. We take into account the fact that the owners of Donnington and Helen Road may have been misled and distressed. However, on the evidence produced, we are not satisfied that the Respondent's general conduct in relation to the owners is a very substantial additional negative factor. In relation to Donnington, the side letter/agreement explains how the owner might realistically have expected that the property might not be used as an HMO. However, on the evidence provided, a landlord of the type described by the Applicant might be expected to have known that this arrangement was not safe. On the evidence produced, this factor appears to carry even less weight in relation to the owner of Helen Road, save for the apparently misleading communications we have already taken into account in relation to the improvement notice.

48. We asked about Pegasus Road and Courtland Road, the two other properties for which HMO licences had been granted naming the Respondent, of ORL, as manager. Ms Coney confirmed the Applicant was not aware of any issues with those properties and understood the landlord had since moved to a different property agent.

49. Because the Respondent did not respond to these proceedings, we have little information about their current activities or financial circumstances, or what other sources of income or ways of making a living they might have. However, the Applicant's questions to the Respondent on 30 April 2021 included requests for: "*…details of all properties in England you currently own, either wholly yourself or jointly with others…*" and "*…details of all other properties in England that you manage the rental or maintenance of on behalf of others …*". In the form he signed and dated 18 May 2021, the Respondent answered "*o*" to these questions.

50. Mr Salisbury told us at the hearing that, after the Respondent had been entered in the database of rogue landlords and property agents, Mr Salisbury had notified the local housing authority (Southend) for the Respondent's home address. The Applicant said as far as they were aware the Respondent was no longer operating in the relevant sectors in Oxford. The Respondent's other company was operating an active property sales agency business. Mr Salisbury said he had checked their website that morning, just before the hearing. The Applicant contended that, since sales agency work would not be prevented by a banning order, such order would not deprive the Respondent of his livelihood.

Conclusion

51. The Applicant argued (in effect) that they had worked up the enforcement options, in line with their guidance note, because the financial penalties in relation to Helen Road did not: "*sufficiently dissuade"* the Respondent *"from repeat offending and this led to the prosecution and subsequent convictions for banning order offences*". However, they seemed to have lost sight of the fact that the financial penalties were not proposed until 26 February 2020 (and then, after considering representations, imposed in June 2020). That was after the banning order offences had been committed (on 7 February 2020).

52. Again, we bear in mind that the Respondent should already have been well aware of his obligations and certainly was after 21 August 2019, when the Applicant sent their first written advice (in relation to Helen Road). However, at that time, ORL had already taken on Donnington Road. ORL should not have taken on the properties or let them as they did and should in the relevant period of about five or six months have taken action to terminate the arrangements and/or make at least a protective application for an HMO licence and arrange any necessary work to comply with the Management Regulations. However, it cannot be said the financial penalties did not deter the Respondent, because

they were not proposed until after the banning order offences were committed. When this was put to the Applicant at the hearing, Ms Coney accepted all the relevant conduct was "*relatively concurrent*".

53. The negative matters summarised in this decision (particularly the failures to licence and to comply with the improvement notice for Helen Road, and the Respondent's evasive approach) have significant weight. However, as Ms Coney said in her closing submissions, the Applicant was relying on what they saw as a substantial abuse of trust of the property owners. For the reasons summarised above, we do not consider the Applicant has demonstrated this. On the case and evidence produced, we are not satisfied that the relevant offences and the other negative factors have sufficient weight to justify a banning order in the absence of evidence of failure to change behaviour in response to the financial penalties (or similar enforcement action). If the relevant offences, conduct and other factors had related to a longer period of time, or been more serious, or showed failure to change behaviour following the penalties, a banning order might well have been appropriate.

54. It appears likely that the financial penalties and entry on the database of rogue landlords and property agents in 2020, let alone the convictions and fines in 2021 for the banning order offences in 2020, were sufficient to remove the Applicant from the relevant activities and deter him from returning unless he is prepared to be careful about the properties he takes on and comply with the relevant legal obligations. We bear in mind the indications in the Guidance that it is also important to deter others from committing similar offences, that people realise the local housing authority is proactive in applying for banning orders where needed and the length of any banning order will be enough to both punish the offender and deter repeat offending. However, the enforcement action already successfully taken by the Applicant is likely to have provided appropriate deterrence. The Applicant sensibly looked past ORL, imposing the financial penalties on (and prosecuting) the Respondent personally. The penalties, fines and other costs are probably greater than the net income or other benefit to the Respondent in relation to Helen Road and Donnington.

55. In the circumstances, we have decided not to make a banning order, but we would like to make it clear we do not criticise the Applicant. They made this application as a precaution, to seek to ensure the Respondent cannot return to the sector in the near future and to send the message that the Applicant will use the enforcement tools at its disposal. As Ms Coney said, the Respondent seems for now to have left the sector, but the entry on the database of rogue landlords and property agents does not prohibit him from returning. The Applicant may wish to consider focusing on enforcement of payment of the financial penalties, collection of the fines and their usual activities of monitoring their area and co-operating with other local housing authorities. While any future application would be a matter for the relevant tribunal, if the Respondent returned to the relevant sector and

committed any further banning order offences, the Applicant (or the relevant local housing authority) may be in a position to make a stronger case for a banning order. With that in mind, we have in this decision described the relevant conduct some detail.

Name: Judge David Wyatt **Date:** 18 February 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).